

# Exhibit 5



DEPARTMENT OF VETERANS AFFAIRS  
Veterans Health Administration  
810 Vermont Avenue, NW  
Washington, DC 20420

July 26, 2018

FOIA Request: VHA-18-03259-F

Mr. David Rankin  
Bedlock, Levin & Hoffman LLP  
99 Park Avenue, PH/26th Flor  
New York, NY 10016-1601

Dear Mr. Rankin:

This letter is an initial agency decision in response to your September 20, 2017 request made under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 to the Veterans Benefits Administration. It was determined by the Office of General Counsel up review of your appeal that the records you seek were located within the Veterans Health Administration (VHA). On April 26, 2018 your request was referred to the VHA FOIA Office. Within your request you seek a full copy of the BIRLS Death File from the Department of Veterans Affairs Veterans.

Please be advised, VHA released the BIRLS Death File received from the Veterans Benefit Administration (VBA) on March 18, 2011 erroneously to Ancestry.com pursuant to FOIA request number 10-02722-F. The erroneous release resulted in a data breach of Veteran's personal information. FOIA does not require or mandate VHA compound that mistake by continuing to provide the public with the BIRLS Death File previously released in error. Therefore, your FOIA request for the BIRLS Death File released by VHA to Ancestry.com in 2011 under the Public Domain Doctrine is denied under 5 U.S.C. § 552 (b)(6) in its entirety.

Please be advised, you may appeal the determinations made in this response to the VA, Office of General Counsel. Appeals may be submitted electronically to their electronic appeal mailbox, [ogcfoiaappeals@va.gov](mailto:ogcfoiaappeals@va.gov) or mailed to the following address:

Office of General Counsel (024)  
Department of Veterans Affairs  
810 Vermont Avenue NW  
Washington, DC 20420

If you should choose to file an appeal, your appeal must be postmarked or electronically submitted no later than ninety (90) calendar days from the date of this letter. Please include a copy of this letter with your written appeal, identify the

determination(s) you are appealing and clearly state why you disagree with the determination(s).

In addition to filing an appeal with the Office of General Counsel, you may also seek assistance and/or dispute resolution services regarding your FOIA request from VHA's FOIA Public Liaison and or Office of Government Information Services (OGIS) as provided below:

VHA FOIA Public Liaison:  
Email Address: [vhafoia2@va.gov](mailto:vhafoia2@va.gov)  
Phone Number: (877) 461-5038

Office of Government Information Services (OGIS)  
Email Address: [ogis@nara.gov](mailto:ogis@nara.gov)  
Fax: (202) 741-5769  
Mailing address:  
Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road  
College Park, MD 20740-6001

If you should have any further questions, please feel free to contact me at (717) 675-8363.

Sincerely,  
DEANA M.  
MARAKOWSKI  
262091  
Deana Marakowski  
VHA FOIA Officer

Digitally signed by DEANA  
M. MARAKOWSKI 262091  
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